

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DOUGLAS CLEVON BRYANT,

Case No. 17-CV-3827 (PJS/FLN)

Plaintiff,

v.

ORDER

WARDEN, FCI Sandstone,

Defendant.

Douglas Clevon Bryant, pro se.

Lisa D. Kirkpatrick, UNITED STATES ATTORNEY'S OFFICE, for defendant.

This matter is before the Court on the Report and Recommendation ("R&R") of Magistrate Judge Franklin L. Noel. Judge Noel recommends dismissing plaintiff Douglas Bryant's 28 U.S.C. § 2241 petition for lack of jurisdiction. The Court has conducted a de novo review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court adopts the R&R.

Bryant brings a claim under *Mathis v. United States*, 136 S. Ct. 2243 (2016), contending that his Guidelines range was incorrectly calculated because he was erroneously subjected to the career-offender enhancement. *Mathis*, however, does not represent a change in the law; instead, "its decision was dictated by decades of prior precedent." *See United States v. Taylor*, 672 F. App'x 860, 864 (10th Cir. 2016); *see also Blake v. United States*, No. 17-CV-1108 (PJS/DTS), 2017 WL 2655098 (D. Minn.) (denying

as futile a motion to add a *Mathis* claim to a § 2241 petition), *aff'd*, No. 17-2448, 2017 WL 6603620 (8th Cir. Oct. 24, 2017). Nothing prevented Bryant from making *Mathis*-type arguments at an earlier stage in his criminal case or as part of his motion under 28 U.S.C. § 2255. Because Bryant cannot establish that his remedy under § 2255 “is inadequate or ineffective to test the legality of his detention,” 28 U.S.C. § 2255(e), his claim must be dismissed for lack of jurisdiction.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court OVERRULES plaintiff’s objection [ECF No. 10] and ADOPTS the R&R [ECF No. 9]. Accordingly, IT IS HEREBY ORDERED THAT:

1. Defendant’s motion to dismiss [ECF No. 4] is GRANTED.
2. Plaintiff’s petition [ECF No. 1] is DISMISSED WITHOUT PREJUDICE FOR LACK OF JURISDICTION.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 6, 2018

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge